IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.665 OF 2004

Pandurang Govind Joyashi ...Appellant

vs.

Maruti Govind Joyashi & Anr. ...Respondents

Mr.Sanjay D.Thokade for the Appellant

CORAM: A.S.OKA,J.
DATE : MARCH 23, 2005.

P.C.:

1. Heard Shri Thokade for the Appellant-Defendant No.1. The suit filed by the Respondent No.1 for partition and separate possession has been decreed by the Appellate Court. By a very elaborate and reasoned Judgment, the Appellate court has considered the case made out by the Appellant. The first contention of the Appellant is that he purchased the property in the name of father. The second contention is that there is a Will executed by the father in his favour by virtue of which he has become owner of the property and the third contention is that the Appellant claims to have exclusive right on the basis of the agreement executed by his mother. The Appellate Court held that the father expired in the year 1975 when the age of the Appellant was only 20 to 21 years. Therefore, the case of the acquisition by the Appellant is not accepted. In so far as the Will is concerned, the Appellate Court has considered the oral and documentary evidence and various other

circumstances which make the execution of Will doubtful. The case of the Appellant on the basis of the alleged Agreement executed in his favour by the mother is also considered by the Appellate Court. The court found that the Appellant cannot get any right on the basis of the said Agreement.

2. The learned Counsel for the Appellant submitted that the suit was barred by limitation as immediately on the death of the father in the year 1975 the original Plaintiff demanded a share which was denied by the Appellant. He submitted that the suit was filed in the year 1996 i.e. after lapse of 12 years from the date on which claim of the Respondent was denied. In a suit for partition filed by the Respondent No.1 who is the real brother of the Appellant, for throwing out the suit on the ground of limitation it was necessary to prove ouster of the Respondent No.1. Obviously, ouster is not established.

3. The findings recorded by the Appellate Court are the findings of fact recorded on the consideration of oral and documentary evidence on record. The said findings are not perverse.

4. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE.